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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SERGIO GAVALDON, et al.,
12 Plaintiffs,

CASE NO. 16cv590-LAB (MDD)

**ORDER GRANTING JOINT
MOTION FOR EXTENSION OF
TIME TO ANSWER; AND**

**ORDER GRANTING IN PART
MOTION TO DISMISS**

[DOCKET NOS. 10 & 12.]

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17 vs.
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19 STANDARD CHARTERED BANK
20 INTERNATIONAL, INC., et al.,
21 Defendants.

22 This is the third and latest of three related cases involving securities claims connected
23 with the Bernie Madoff investments scandal. Plaintiffs Sergio and Angelica Gavaldon are
24 individual investors who allege Defendants misled them about investments, causing them
25 to lose money. Plaintiffs S&A Investments, Inc. and Harley Invest Ltd. are Cayman Island
26 pass-through entities that the Gavalmons formed in order to invest.

27 The earlier two actions were *Stanchart Securities Int'l, Inc. v. Gavaldon*, 12cv2522-
28 LAB (MDD), which sought to enjoin a FINRA arbitration, and *Gavaldon v. Stanchart*

1 *Securities Int'l, Inc.*, 12cv3016-LAB (MDD), in which the parties respectively sought to vacate
 2 or confirm the FINRA arbitration panel's award. The "award" was actually a determination
 3 that FINRA had no jurisdiction to arbitrate the Gavaltons' claims. The Court declined to
 4 advise the Gavaltons where they ought to file their claim next. (See 12cv3016, Docket no.
 5 18 (Order Denying Cross-Motions for Reconsideration) at 2:25–3:19.) They then filed a
 6 complaint in California state court. Defendant Standard Chartered Bank International
 7 (Americas) Ltd. ("SCBI") then removed, citing both diversity jurisdiction and the Edge Act,
 8 12 U.S.C. § 632. See *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006)
 9 (pointing out that the Edge Act "invests in the federal courts original jurisdiction over cases
 10 arising out of foreign banking transactions to which a U.S. corporation is a party").

11 **Motion for Extension of Time**

12 The parties jointly moved for an extension of time to file an answer to the complaint.
 13 But before the Court ruled on the motion, Defendants filed a motion to dismiss under Fed.
 14 R. Civ. P. 12(b)(6). (See Docket nos. 12 (Motion) and 13 (Joinder by Individual
 15 Defendants).) This had the effect of automatically extending the time to answer. See Fed.
 16 R. Civ. P. 12(a)(4). The motion for an extension of time is **GRANTED** and the Motion is
 17 accepted as filed.

18 **Legal Standards**

19 Defendants filed a motion to dismiss for failure to state a claim, under Fed. R. Civ. P.
 20 12(b)(6). The motion argues that the claims are time-barred, that the complaint does not
 21 state a claim, and that fraud claims do not satisfy Fed. R. Civ. P. 9(b)'s pleading standard.

22 A motion to dismiss challenges the legal sufficiency of a complaint. *Navarro v. Block*,
 23 250 F.3d 729, 732 (9th Cir. 2001). The Court must accept all factual allegations as true and
 24 construe them in the light most favorable to Plaintiffs. *Cedars Sinai Med. Ctr. v. Nat'l League*
 25 *of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007). The Court does not weigh
 26 evidence or make credibility determinations. *Acosta v. City of Costa Mesa*, 718 F.3d 800,
 27 828 (9th Cir. 2013). The well-pleaded facts must do more than permit the Court to infer "the
 28 mere possibility of misconduct"; they must show that the pleader is entitled to relief. *Ashcroft*

1 *v. Iqbal*, 556 U.S. 662, 679 (2009). To defeat the motions to dismiss, the factual allegations
2 need not be detailed, but they must be sufficient to “raise a right to relief above the
3 speculative level” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

4 In assessing the adequacy of a complaint, the Court must look at the complaint itself,
5 and not to explanations provided in the opposition. New or expanded allegations in
6 opposition to a motion to dismiss are considered when deciding whether to grant leave to
7 amend, but are not considered when ruling on a 12(b)(6) motion. See *Schneider v. Cal.*
8 *Dep’t of Corr. & Rehab.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998). See also *Broam v. Bogan*,
9 320 F.3d 1023, 1026 n.2 (9th Cir. 2003).

10 When a complaint is dismissed for failure to state a claim, ordinarily leave to amend
11 is granted. See *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)
12 (per curiam). But leave to amend will be denied where it is clear the complaint cannot be
13 saved by amendment. *Id.*

14 **Choice of Law**

15 To a great extent the briefing focuses on which law applies. The parties suggest that
16 either California or Florida law applies. The dispute is particularly sharp because the
17 applicable law concerning statutes of limitation and tolling could render Plaintiffs’ claims
18 untimely.

19 In the earlier two cases, jurisdiction was premised on the existence of a federal
20 question, *i.e.*, application of the Federal Arbitration Act. In this case, jurisdiction is premised
21 on both diversity and the Edge Act, which affects choice of law Compare *Huynh*, 465 F.3d
22 at 997 (holding that where jurisdiction was based on Edge Act, federal common law —
23 including choice of law rules — applies) with *Fields v. Legacy Health Sys.*, 413 F.3d 943,
24 950 (9th Cir. 2005) (“Federal courts sitting in diversity must apply the forum state’s choice
25 of law rules to determine the controlling substantive law.”) Neither party suggests that federal
26 substantive common law or choice-of-law provisions apply. Rather, the parties represent the
27 choice as being between California and Florida law only.

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Defendants point out that Plaintiffs' investments were made through their accounts at SCBI in Miami, which is where SCBI has its headquarters. They argue that Plaintiffs' account agreements include Florida choice-of-law provisions. The documents they do attach don't show a clear Florida choice-of-law provision applies to all claims, though. Exhibit A, S&A's application, and Exhibit B, Harley's application, do include Florida choice-of-law provisions. (Docket nos. 12-4 at 4, ¶ 11; 12-5 at 6, ¶ 9.) The applications incorporate the Rules and Regulations Governing Accounts ("RRGA"), which include a choice-of-law provision for either Florida law or applicable federal law. But the briefing doesn't make clear why all the claims arising in connection with the RRGAs are governed by Florida law; all the RRGAs provisions say is that the RRGAs are to be "governed by and construed in accordance" with either Florida or federal law. (Docket nos. 12-6 at 12, ¶ 49; 12-7 at 12, ¶ 51; 12-8 at 24, § 49.) Defendants also attach a Nondiscretionary Investment Services Agreement ("NISA"), which includes a Florida choice-of-law provision. They say this applies to Harley; but they don't claim it applies to S&A. (See Docket no. 121 at 14:1–4.)¹ No documents show the Gavaltons' own claims are governed by Florida law, however. And the briefing does not address whether claims against Defendants other than SCBI are subject to a Florida choice-of-law provision.

Defendants argue that the federal court assigned to multi-district litigation of related claims against SCBI determined that Florida law applied. *See Anwar v. Fairfield Greenwich Ltd.*, 745 F. Supp. 2d 360, 369 (S.D.N.Y. 2010). It isn't clear why the Court should follow that precedent, though, for two reasons. First, that court held a particular plaintiff's claims were governed by the NISA, which she executed; here, Defendants have yet to establish either that Plaintiffs all executed the NISA or that it governs Plaintiffs' and Defendants'

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¹ The supporting declaration merely identifies the NISA as being the American Express Bank International NISA, without naming the other signatories. (Docket no. 12-2 at 2, ¶ 8.) The NISA itself does not identify which account holder is signing it, or who signed it on the account holder's behalf.

1 relationship.² Second, the opinion noted that the plaintiff had made “no persuasive
 2 argument” why the choice of law provision should not apply. It isn’t clear that plaintiff made
 3 the same arguments that Plaintiffs are making here. Third, for reasons not stated in
 4 documents before the Court, that court later reconsidered its decision and reinstated a
 5 number of the plaintiff’s claims. *Anwar v. Fairfield Greenwich Ltd.*, 745 F. Supp. 2d 384, 384
 6 (S.D.N.Y. 2010).

7 Plaintiffs argue for the application of California substantive law, but argue that either
 8 California or Florida law would lead to the same outcome. They deny Defendants’ contention
 9 that they transacted business in Florida, and argue they did business with SCBI in San
 10 Diego.

11 Under California law, choice-of-law provisions are enforceable as long as the chosen
 12 state has a substantial relationship to the parties’ transaction or there is another reasonable
 13 basis for the parties’ choice, and the chosen state’s law is not contrary to a fundamental
 14 policy of California law. *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal.4th 459, 466 (1992).
 15 If these requirements are met and there is still a conflict between California and foreign law,
 16 the Court must then determine whether California has a materially greater interest in the
 17 determination of the issue. *Washington Mutual Bank, FA v. Superior Court*, 24 Cal.4th 906,
 18 917 (2001).

19 The choice of law provision is considered reasonable if one of the parties lives in the
 20 chosen state. *Hughes Electronics Corp. v. Citibank Delaware*, 120 Cal. App. 4th 251, 258
 21 (Cal. App. 2 Dist. 2004). Here, three Defendants are alleged to be Florida citizens, and one
 22 a California citizen. (Notice of Removal, Docket no. 1, ¶ 13.) Plaintiffs are Mexican nationals
 23 and Cayman Island entities. Although Plaintiffs argue the agreements were entered into in
 24 San Diego and they spend a substantial amount of time in California, they are not permanent
 25 California residents. See *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 594 (9th Cir. 2012)

27 ² In an earlier related case, Plaintiffs argued that a later account agreement replaced
 28 the American Express Bank International brokerage agreement. (See case 12cv3016,
 Docket no. 1, ¶ 23.) That agreement, apparently, was the StanChart Securities International
 Brokerage Client Agreement (Case 12cv301, Docket no. 9-4 at 46–52.)

1 (citing *Edgar v. MITE Corp.*, 457 U.S. 624, 644 (1982) (“ . . . California’s interest in applying
2 its law to residents of foreign states is attenuated.”) Under the circumstances, choice of
3 Florida law is reasonable.

4 Plaintiffs identify as public policy concerns California law requiring enforcement of
5 arbitration agreements and the availability of equitable tolling. The former is not at issue
6 here, however, and Plaintiffs have not identified any authority for the principle that the
7 availability of equitable tolling is fundamental policy in California.

8 Even if principles of equitable tolling were a fundamental policy in California, the Court
9 would then determine whether California has a materially greater interest in the way this
10 case is adjudicated. See *Washington Mutual*, 24 Cal.4th at 917. This case’s only major
11 connections to California are: 1) one Defendant, Luisa Serena, lives here; 2) Plaintiffs allege
12 they did business with Defendants’ San Diego office; and 3) the Gavaldons spend a
13 substantial amount of time in California. By contrast, three Defendants (including the two
14 financial institutions) are located in Florida. California does not appear to have a materially
15 greater interest than Florida in this litigation.

16 For these reasons, the Court concludes that under California law, a choice-of-law
17 provision requiring the application of Florida law is enforceable in this case. That being said,
18 Defendants have not shown that the provision applies to each party, because it is not clear
19 which parties agreed to it. The question of whether different states’ laws could apply to
20 different claims has not been briefed. It may well be that Plaintiffs’ claims are governed by
21 Florida substantive law, but the issue involves questions of fact that are not subject to
22 resolution on a 12(b)(6) motion. In other words, the briefing does not show this to the degree
23 required for a motion to dismiss.

24 **Statute of Limitations and Tolling**

25 Defendants argue Plaintiffs’ claims are time-barred under either Florida or California
26 law, while Plaintiffs argue they are timely under either state’s law. As noted, neither party
27 has suggested that federal common law or some other body of law ought to apply.

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1 Plaintiffs have cited Fed. R. Civ. P. 15(c) and argued for application of the doctrine
2 of relation back, and ask that their claims be deemed to relate back to their November 2010
3 Statement of Claim or, alternatively, to their 2012 petition to vacate. But the doctrine applies
4 when pleadings are amended, rather than to separate cases. See Fed. R. Civ. P. 15(c)(1).
5 The effect of a separate pending case is governed by the law of tolling.

6 **Florida Statutes of Limitations**

7 Defendants argue that Plaintiffs' claims for negligence, gross negligence, breach of
8 fiduciary duty, and unjust enrichment accrued no later than February, 2008. They argue
9 some of the claims may have accrued earlier. Under Florida law, they argue, a 4-year
10 statute of limitations applies to these claims. With regard to the fraud, deceit, and negligent
11 misrepresentation claims, Defendants argue Florida's four-year limitations period began to
12 run no later than December, 2008, when Madoff's fraud came to light. On November 24,
13 2010, Plaintiffs initiated the FINRA arbitration. The FINRA panel issued its award on
14 November 28, 2012 and Plaintiffs filed suit on December 19, 2012 to have that award
15 vacated. Judgment was entered in that suit on December 15, 2015. Then on January 11,
16 2016, Plaintiffs filed their complaint in this action.

17 Florida's statute of limitations is unusually strict. See generally *HCA Health Servs.*
18 *of Florida, Inc. v. Hillman*, 906 So.2d 1094 (Fla. App. 2 Dist. 2004). Under section 95.051,
19 Florida Statutes, only a limited number of circumstances will justify tolling. Specifically,
20 Section 95.051(1) enumerates eight circumstances under which a statute of limitations is
21 tolled. With exceptions inapplicable here, Section 95.051(2) precludes the use of tolling
22 provisions other than those listed. Plaintiffs rely on Section 95.051(1)(g), "The pendency of
23 any arbitral proceeding pertaining to a dispute that is the subject of the action." Equitable
24 estoppel may bar application of the statute of limitations in a particular situation, if the statute
25 of limitations ran because Defendants induced Plaintiffs to allow it to run. See generally
26 *Major League Baseball v. Morsani*, 790 So.2d 1071 (Fla. 2001). See also *Ryan v. Lobo De*
27 *Gonzalez*, 841 So.2d 510, 524 and n.9 (Fla. App. 4 Dist. 2003) (citing with approval cases
28 where equitable estoppel was applied).

1 Defendants argue that Plaintiffs should not be able to take advantage of Florida's
2 tolling provisions because they pursued arbitration in the wrong forum. But Florida's
3 exception merely requires that the arbitral proceeding "pertain[] to" the claims. While the
4 Court confirmed the arbitration panel's "award" determining that it lacked jurisdiction over the
5 claims, the question of jurisdiction was not a foregone conclusion. Defendants first moved
6 to dismiss the arbitration on June 24, 2011. (See Case 12cv3016, Docket no. 6 at 6:1–3.)
7 The panel itself put off the inquiry and only towards the end did it consider jurisdiction. It
8 does not appear Plaintiffs were acting in bad faith when they sought to arbitrate.

9 Defendants ask the Court to construe "arbitral proceeding" narrowly, to include only
10 the arbitration itself, and to exclude proceedings in this Court to confirm or vacate the award.
11 In support of this, they cite Section 684.0043(1), Florida Statutes, which says that arbitral
12 proceedings conclude with the arbitrator's award. This section deals with international
13 commercial arbitration where the arbitration was held in Florida. See Section 684.0002(1)
14 and (2). But the meaning Defendants propose appears to coincide with usage in the legal
15 community, and Plaintiffs have not proposed another acceptable meaning. See, e.g., *Green*
16 *Tree Servicing, LLC v. McLeod*, 15 So.3d 682, 692 (Fla. App. 2 Dist. 2009) (using "arbitral
17 proceedings" to refer to proceedings before the arbitration panel); *Four Seasons Hotels &*
18 *Resorts, B.V. v. Consorcio Barr S.A.*, 377 F.3d 1164, 1171 (11th Cir. 2004) (same).

19 If "arbitral proceedings" refers only to the arbitration itself and not to actions to confirm
20 or vacate the award, then under Florida law the limitations period has run. But it appears
21 Plaintiffs may be entitled to equitable tolling under these circumstances. Case 12cv3016
22 was not solely Plaintiffs' doing; Defendants Stanchart Securities International, Inc. and
23 Standard Chartered International (Americas) Ltd. brought their own motion to confirm the
24 arbitration award. (See Case 12cv3016, Docket no. 6 (Answer to Complaint, and Cross-
25 Petition to Confirm Arbitration Award).) Even assuming the litigation over confirmation or
26 vacatur of the arbitration award does not count as part of the "arbitral proceeding" under
27 Florida law, Defendants' own petition to confirm the arbitration award would provide a basis
28 for equitable estoppel. In other words, Defendants' own decision to litigate their claims in

1 this Court equitably estops them from arguing that the clock was ticking during the pendency
2 of their own case.

3 With the benefit of equitable estoppel, Plaintiffs' claims would be timely as to any
4 Defendant who litigated case 12cv3016. Three of the Defendants in this case — Standard
5 Chartered Bank International, Inc.; Carlos Maria; and Luisa Serena — were not. Those
6 three Defendants are therefore not equitably estopped from asserting a statute of limitations
7 defense.

8 Therefore, assuming Florida law applies, Plaintiffs' claims are timely as to only
9 Stanchart Securities International, Inc.

10 **California Statute of Limitations**

11 Plaintiffs argue that, if California law applies, their claims are timely, and Defendants
12 have not adequately briefed the issue. They merely argue in a footnote that equitable tolling
13 is unavailable because Plaintiffs have engaged in forum shopping and needless delay. But
14 the Court cannot conclude as a matter of law that they have done either of these things.

15 The Court therefore deems this issue waived and accepts for the purpose of this
16 ruling that under California law, Plaintiffs' claims would be timely. The question of which
17 state's law applies — Florida's or California's — does make a difference. But because
18 factual questions prevent judgment as a matter of law, the Court cannot decide this issue
19 at this time.

20 **Failure to State a Claim**

21 Defendants' motion points out various ways the complaint does not fully meet the
22 *Twombly/Iqbal* pleading standard. Bearing in mind that the case was filed in state court and
23 removed to this Court, Plaintiffs' failure to follow federal pleading standards is not surprising.
24 The Court has reviewed the complaint and agrees it fails to meet federal standards, though
25 not to the degree Defendants argue.

26 In addition, fraud claims pending in federal court, including those arising under state
27 law, must be pled with particularity as required by Fed. R. Civ. P. 9(b). *Vess v. Ciba-Geigy*
28 *Corp. USA*, 317 F.3d 1097, 1102 (9th Cir. 2003). This includes alleging who made various

1 misrepresentations, how the misrepresentations were conveyed to Defendants, and under
2 what circumstances. See *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir.1998). With regard
3 to its fraud claims, the complaint does not meet this standard.

4 The complaint also does not identify the parties adequately, as is required. See
5 *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007) (requiring plaintiffs pleading
6 fraud to identify defendants separately). Instead, the complaint for the most part refers to
7 Defendants collectively as “SCB”. Under Rule 9, the complaint must identify each
8 Defendant’s role in the alleged fraud, although it need not link each Defendant to a
9 fraudulent statement. *Id.* at 764.

10 The complaint also alleges that Defendants pushed the Gavaldons into unsuitable
11 investments, without making clear how Defendants knew what type of investments the
12 Gavaldons would need or why they had a duty to recommend suitable investments.
13 Defendants, for their part, argue they had no duty to recommend a suitable portfolio to
14 Plaintiffs, because the account was nondiscretionary. They only cite Florida law for this
15 proposition.

16 Defendants contend that as part of their fraud claim, Plaintiffs must plead facts
17 plausibly suggesting scienter. In response, Plaintiffs point to allegations that they have
18 alleged Defendants received undisclosed payments that Defendants themselves described
19 as kickbacks. (See Complaint, ¶¶ 69, 73.) The problem is that the allegations refer to
20 Defendants collectively, instead of alleging who received the payments and who
21 characterized them as kickbacks. The context in which they were described as kickbacks
22 should also be alleged, in order to show that the payments actually were kickbacks and not
23 permitted and appropriate fees of some kind.

24 They have also alleged various examples of Defendants concealing or
25 misrepresenting facts, and have alleged Defendants did this in order to induce Plaintiffs to
26 invest their money. (*Id.*, ¶ 141.) To the extent they are required to plead Defendants’ mental
27 states, they may do so generally. See Rule 9(b). If Plaintiffs are able to allege these facts

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1 with respect to individual Defendants, as well as alleging facts plausibly suggesting a
2 common fraudulent purpose, they may be able to meet the pleading standard.

3 Claims other than fraud are not subject to the Rule 9(b) pleading standard, and
4 Defendants raise other arguments concerning these claims. They contend that the unjust
5 enrichment claim fails as a matter of law, because it can proceed only if the subject matter
6 of the claim is not covered by a valid contract. See *In re Managed Care Litig.*, 185 F.
7 Supp.2d 1310, 1337 (S.D. Fla. 2002). But Plaintiffs argue their unjust enrichment claims
8 arise from fees not authorized by contract, including fees from the sale of a substantial life
9 insurance policy. The briefing does not address whether the investment agreements
10 included an agreement concerning the sale of life insurance. Because of this, the Court
11 cannot decide this issue as a matter of law.

12 With regard to duty to recommend suitable investments, Defendants agree that even
13 under Florida law they have a limited duty to nondiscretionary account holders. These
14 include, among other things, a duty to be informed about the price, nature, and financial
15 prognosis of an investment before recommending it, informing customers of the risks
16 involved in transacting the security, refraining from self-dealing, and not misrepresenting
17 material facts. See *First Union Brokerage Disc. Servs., Inc. v. Milos*, 744 F. Supp0. 1145,
18 1156 (S.D. Fla. 1990). They contend there is no duty under Florida law to recommend a
19 suitable diversified investment portfolio. And they argue the complaint fails to allege any
20 investment losses.

21 Plaintiffs, however, argue that Defendants assumed fiduciary obligations, which
22 included obligations to make suitable recommendations both as to individual investments
23 and as to the portfolio. The complaint alleges various statements to this effect that
24 Defendants made, but does not identify which Defendants made them or in what context.

25 Assuming they can point to an agreement under which Defendants assumed a fiduciary
26 obligation, or some other obligation to make suitable recommendations, they would be on
27 firmer ground. Construing the allegations in the light most favorable to Plaintiffs, the
28 complaint does allege that Defendants recommended very risky investments they knew were

1 unsuitable for Defendants, who they knew had a low tolerance for risk. (Complaint,
2 ¶¶ 23–25, 28.) The complaint also alleges that this resulted in foreseeable losses; when the
3 Madoff investments had been exposed, Plaintiffs had to liquidate the equities in their account
4 at a loss. (*Id.*, ¶ 27.) Plaintiffs also allege the unsuitability of various individual investments
5 Defendants recommended. (*Id.*, ¶¶ 30–44.) As part of this, they allege various
6 misrepresentations, including the risk level. (*Id.*) They also alleged that Defendants urged
7 them to buy securities on margin, an unsuitable strategy which resulted in their becoming
8 highly leveraged and paying high interest. (*Id.* at 45–49.) Essentially, they allege
9 Defendants pretended to make recommendations in Plaintiffs’ interest, even though they
10 were in fact encouraging investments solely to generate fees. (*Id.*, ¶ 42.) They also allege
11 Defendants urged them to purchase an expensive and unsuitable life insurance policy,
12 merely to generate more fees. (*Id.*, ¶¶ 51–52.) The complaint also focuses extensively on
13 Defendants’ allegedly reckless or fraudulent recommendation of Madoff securities,
14 mentioning many of the same misrepresentations. (*Id.*, ¶¶ 54–94.) Plaintiffs alleged they
15 lost \$2.4 million in Madoff securities as a result. (*Id.*, ¶ 54.)

16 Construing the allegations in the light most favorable to Plaintiffs, as the Court must
17 do at this stage, the complaint alleges affirmative misrepresentations and deliberately
18 misleading statements by Defendants collectively, and resulting losses. The major defect
19 is that the allegations are made against Defendants as a group. To the extent Plaintiffs’
20 claims are based on a fraud theory, they also fail to plead facts with particularity as required
21 by Rule 9(b). But to the extent these allegations are intended to support a negligent
22 misrepresentation or breach of fiduciary duty claim, they need not be pled with the same
23 degree of particularity.

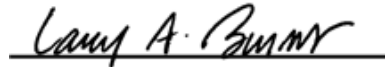
24 This analysis of the complaint’s allegations has necessarily been fairly broad, because
25 the complaint and motion are both quite detailed. The bottom line, though, is that the
26 complaint is deficient as pled, for the reasons set forth above, and must be dismissed.
27 Because it is not clear the complaint cannot be saved by amendment, Plaintiffs will be given
28 leave to amend.

1 **Conclusion and Order**

2 Defendants' motion to dismiss is **GRANTED IN PART AND DENIED IN PART**. The
3 choice of law issue involves resolution of factual questions not appropriate at this stage of
4 litigation. And in any event, this issue has not been briefed sufficiently to allow the Court to
5 make a determination as a matter of law. Because the complaint does not meet the
6 *Twombly/Iqbal* pleading standard, and because its fraud claims are not pled with the
7 particularity required under Rule 9(b), the complaint is **DISMISSED WITH LEAVE TO**
8 **AMEND**. No later than 28 days from the date this order is issued, Plaintiffs may file an
9 amended complaint that remedies the defects this order has identified.

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11 **IT IS SO ORDERED.**

12 DATED: February 28, 2017

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14 **HONORABLE LARRY ALAN BURNS**
15 United States District Judge
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